

## **Notice of Proposed Action**

### **Title 10: Bureau of Real Estate Appraisers**

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below.

#### **PUBLIC HEARING**

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

#### **COMMENT PERIOD**

Written comments including those sent by mail or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on March 17, 2020.

#### **AVAILABILITY OF MODIFICATIONS**

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comment related to this proposal or who have requested notification of any changes to the proposal.

#### **AUTHORITY AND REFERENCE**

Authority vested by Sections 481, 482, 493, 11313, and 11314 of the Business and Professions Code to implement, interpret and make specific sections 141, 480, 481, 482, 488, 490, 493, and 11340 of the Business and Professions Code.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) amended the Business and Professions Code related to the substantial relationship determination and the criteria of rehabilitation. These amendments require the Bureau to amend its regulations to consider certain issues when evaluating whether there is a substantial relationship between a crime or act and being an appraiser and whether the individual has been rehabilitated. The Bureau proposes to amend sections 3722 and 3723 to comply with the directive in AB 2138.

### Section 3722: Substantial Relationship Criteria

The proposed regulation would change the substantial relationship criteria to allow denial, suspension, or revocation of a license for commission of a crime, professional misconduct, or an act if it is substantially related to the qualifications, functions or duties of a licensee. To determine if whether a crime, professional misconduct, or an act is substantially related to the qualifications, functions or duties of a licensee, the Bureau would evaluate if to a substantial degree the crime, professional misconduct, or act evidences present or potential unfitness to hold such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. The amendments would also establish criteria for the Bureau to consider when making the substantial relationship determination for a crime.

The regulation already lists when a crime or act shall be deemed substantially related to the qualifications, functions or duties of a licensed appraiser. The proposal would add professional misconduct to crimes and acts to be consistent with earlier subsections. The Bureau does not propose amending the actions that are deemed to be substantially related to the qualifications, functions or duties of a licensee.

### Section 3723: Criteria of Rehabilitation

The proposed regulation would require the Bureau, when considering denying an applicant who completed the criminal sentence at issue without a violation of probation or parole, to determine whether the applicant made a showing of rehabilitation and is presently eligible for a license. In making that determination, the proposed regulation would require the Bureau to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened; and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole were modified; and why. When considering denying a license for something other than a completed criminal sentence under Section 480 of the Business and Professions Code or if the Bureau determines the applicant is not rehabilitated pursuant to the criteria above, the Bureau would consider the following criteria: the nature and gravity of the act or crime, evidence of any act or crime committed subsequent to the act under consideration, the number of years that have elapsed since the act or crime, whether the applicant complied with lawful sanctions, all evidence of rehabilitation submitted by the applicant, and the criteria stated above. When the Bureau is considering suspending or revoking a license, the Bureau will consider similar criteria.

### **ANTICIPATED BENEFITS**

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Bureau's use of

their criminal histories. Further, by reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have greater access to licensees.

### **CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

### **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This is based upon the fact that the proposed amendments are limited to determining whether individuals qualify for a license and whether they have been rehabilitated. These changes will affect few individuals and will likely not result in a significant shift in more or less licensees for businesses to hire.

Cost Impact on Representative Private Person or Business: The Bureau does not anticipate any cost impact as the amendments will not require more from private persons or businesses. As a result the Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Businesses: The proposed regulations will not impact small businesses because the proposed amendments will affect few individuals and will likely not result in a significant shift in more or less licensees for businesses to hire.

### **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Impact on Jobs/Businesses: The Bureau has determined this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing

businesses or the expansion of business in the State of California. This is because the proposed amendments will likely not result in a significant shift in more or less licensees.

Benefits of Regulation: The Bureau has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The proposal also improves clarity, transparency, and consistency for applicants and licensees when determining substantial relationship. The public may benefit from the proposal with increased access to licensed professionals. Businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

### **CONSIDERATION OF ALTERNATIVES**

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Bureau rejected the following alternative. Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

### **TEXT OF PROPOSAL**

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at [www.brea.ca.gov](http://www.brea.ca.gov). Click the "Laws & Enforcement" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "Substantial Relationship and Rehabilitation Criteria."

### **AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of

this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

### **CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Kyle Muteff, Legal Counsel  
3075 Prospect Park Drive, Suite 190  
Rancho Cordova, CA 95670  
Phone: 916-341-6126  
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The backup person is:  
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Proposed Text  
California Code of Regulations  
Title 10, Chapter 6.5, Article 12

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~striketrough~~. Proposed additions are in underline.

**§ 3722. ~~Criteria of Substantial Relationship~~ Criteria.**

(a) For the purposes of the denial, suspension or revocation of a license pursuant to section 141 or division 1.5 (commencing with section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness to hold such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Bureau shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of a licensee.

~~(a) A crime or act shall be deemed to be substantially related to the qualifications, functions or duties of an appraiser if, to a substantial degree, it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his/her license.~~ (c) For purposes of subdivision (a), the crimes, professional misconduct, or acts deemed to be substantially related to the qualifications, functions or duties of a licensee, include, but are not limited to, the following:

- (1) Crimes or Acts involving the use of fraud, deceit or dishonesty for profit or gain;
- (2) Taking, appropriating or retaining the funds or property of another;
- (3) Forging, counterfeiting or altering any instrument affecting the rights or obligations of another;
- (4) Evasion of a lawful debt or obligation, including but not limited to tax obligations;
- (5) Traffic in any narcotic or controlled substance in violation of law;
- (6) Driving under the influence of alcohol or drugs, while conducting business related to real estate appraisals; conviction of felony driving under the influence of alcohol or

drugs; or conviction of two or more misdemeanor driving under the influence of alcohol or drugs within any three year period, whether or not while conducting business;

(7) Violation of a relation of trust or confidence;

(8) Theft of personal property or funds;

(9) Crimes or acts of violence or threatened violence against persons or property;

(10) The commission of any crime or act punishable as a sexually related crime, if that crime or act is substantially related to the duties and functions of the licensee; or

(11) Misrepresentation of facts or information on the appraisal license application and/or cheating on the examination.

~~(b) An act or crime shall be deemed to be substantially related to the functions, duties or qualifications of an appraiser if it involves any~~(12) Any willful violation of the Real Estate Appraisers' Licensing and Certification Act or provisions of the Business and Professions Code applicable to appraisers.

~~(c) The weight to be accorded to a substantially related crime or act under (a) or (b) shall be determined by application of the following standards:~~

~~(1) The extent to which the particular acts or omissions have adversely affected other persons, including but not limited to lenders, clients, employers or other persons; and the probability that such adverse effects will continue;~~

~~(2) The recency or remoteness in time of the acts or omissions;~~

~~(3) The type of license applied for or held by the person involved;~~

~~(4) The extenuating or aggravating circumstances surrounding the acts or omissions;~~

~~(5) The motivation of the acts or omissions, whether praiseworthy or blameworthy;~~

~~(6) The probability that the questioned acts or omissions will continue or be repeated; and~~

~~(7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other licensed persons.~~

Note: Authority cited: Section 481, 493, 11313, and 11314, Business and Professions Code.  
Reference: Sections 141, 475, 480, 481, 490, and 493482, Business and Professions Code.

### **§ 3723. Criteria of Rehabilitation.**

~~(a) Upon a determination pursuant to Section 3722 that a substantial relationship exists between particular acts or omissions and the qualifications, functions or duties authorized or to be~~

authorized by a license applied for or held, the Chief shall consider all competent evidence provided by the applicant or licensed appraiser or known to the Chief, consisting of testimony or other facts showing:

- (1) The effect of the passage of time since the most recent conviction or offense;
- (2) Restitution to any person who has suffered monetary losses through “substantially related” acts or omissions of the Applicant;
- (3) Judicial relief from the consequences of criminal convictions resulting from immoral or antisocial acts including but not limited to Release from Probation (PC 1203.4), Certificate of Rehabilitation (PC 4852.01), finding of factual innocence (PC 841.8, 851.85), Diversion (completed), or other comparable orders of a court, including federal courts;
- (4) Successful completion or early discharge from probation or parole;
- (5) Abstinence from the use of controlled substances or alcohol for not less than two years if the crime or offense is attributable in part to the use of controlled substances or alcohol;
- (6) Payment of any fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment;
- (7) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or offense;
- (8) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement;
- (9) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others;
- (10) Correction of business practices resulting in injury to others or with the potential to cause such injury;
- (11) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems;
- (12) New and different social and business relationships from those which existed at the time of the crime or offense; or
- (13) Change in attitude from that which existed at the time of the crime or offense as evidenced by any or all of the following:
  - (A) Testimony of applicant or licensed appraiser;



~~(B) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and behavioral patterns;~~

~~(C) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; or~~

~~(D) Evidence from psychiatrists or other persons competent to testify with regard to psychiatric or emotional disturbances.~~

~~(b) The enumeration of criteria in (a) does not preclude the consideration of other competent evidence of rehabilitation.~~

(a) When the Bureau is considering denying a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the Bureau shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant has completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s);

(2) The length(s) of the applicable parole or probation period(s);

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified;

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation;

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification;

(6) The effect of the passage of time since the most recent conviction or offense;

(7) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the Applicant;

(8) Judicial relief from the consequences of criminal convictions resulting from immoral or antisocial acts including but not limited to Release from Probation (PC 1203.4), Certificate of Rehabilitation (PC 4852.01), finding of factual innocence (PC 841.8, 851.85), Diversion (completed), or other comparable orders of a court, including federal courts;

(9) Successful completion or early discharge from probation or parole;

(10) Abstinence from the use of controlled substances or alcohol for not less than two years if the crime or offense is attributable in part to the use of controlled substances or alcohol;

(11) Payment of any fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment;

(12) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or offense;

(13) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement;

(14) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others;

(15) Correction of business practices resulting in injury to others or with the potential to cause such injury;

(16) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems;

(17) New and different social and business relationships from those which existed at the time of the crime or offense; and

(18) Change in attitude from that which existed at the time of the crime or offense as evidenced by any or all of the following:

(A) Testimony of applicant or licensed appraiser;

(B) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and behavioral patterns;

(C) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; or

(D) Evidence from psychiatrists or other persons competent to testify with regard to psychiatric or emotional disturbances.

(b) If subdivision (a) is inapplicable, or the Bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the Bureau shall apply the following criteria in evaluating an applicant's rehabilitation. The Bureau shall find the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the Bureau finds the applicant is rehabilitated:

(1) The nature and gravity of the act(s) or crimes(s) under consideration as grounds for denial;

(2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial;

(3) The number of years that has elapsed since the commission of the act(s) or crime(s) under consideration as grounds for denial;

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant;

(5) Evidence, if any, of rehabilitation submitted by the applicant; and

(6) The criteria in subdivision (a)(1)-(18), as applicable.

(c) When considering suspending or revoking a license, the Bureau, in evaluating the rehabilitation of a licensee shall consider the following criteria:

(1) Nature and gravity of the act(s) or crime(s);

(2) The number of years that has elapsed since commission of the act(s) or crime(s) under consideration as grounds for suspension or revocation;

(3) Total history of act(s) or crime(s);

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee;

(5) Evidence, if any, of rehabilitation submitted by the licensee;

(6) The criteria in subdivision (a)(1)-(18), as applicable; and

(7) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

Note: Authority cited: Sections 482, 11313, and 11314, Business and Professions Code.

Reference: Sections 480, 481, 482, 488, 493, and 11340, Business and Professions Code.